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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 96

JAMES MONROE JEFFERSON,

Appellant,

vs.

CHRONICLE PUBLISHING COMPANY, A CALIFORNIA CORPORATION,

JURISDICTIONAL STATEMENT

CLARA THOMAS,
727 West Seventh Street,
Los Angeles 17, California;
JAMES G. BUTLER,
700 East Compton Boulevard,
Compton, California;
WILLKIE MAYOCK,
Kass Building,
Washington 5, D. C.,
Attorneys for Appellant.

INDEX

Subject Index

	Page
Statement as to jurisdiction	1
Statutory provisions sustaining jurisdiction	1
Statutes involved	2
Summary statement of the facts	5
Importance of the questions involved	8
Statutes and cases believed to sustain jurisdiction	9
Cases to sustain jurisdiction	10

Table of Cases Cited

Buchanan v. *Warley*, 245 U. S. 60, 62 L. Ed. 149	10
Hebert v. *Louisiana*, 272 U. S. 312, 71 L. Ed. 270	10
Missouri ex rel. Gaines v. *Canada*, 305 U. S. 337, 83 L. Ed. 208	10
Oyama v. *California*, 332 U. S. 633, 92 L. Ed. 249	10
Sipuel v. *Board of Regents of the University of Oklahoma*, 332 U. S. 631, 92 L. Ed. 247	10
Stromberg v. *California*, 283 U. S. 359, 75 L. Ed. 1117	10
Takahashi v. *Fish and Game Commissioner*, 334 U. S. 410, 92 L. Ed. 1478	10
Toomer v. *Witsell*, 334 U. S. 385, 92 L. Ed. 1460	10
Truax v. *Corrigan*, 257 U. S. 312, 66 L. Ed. 254	10
Truax v. *Raich*, 239 U. S. 33, 60 L. Ed. 131	10
United States v. *C. I. I.*, 92 L. Ed. 1315	10
Werner v. *Southern Calif., etc., Newspapers*, 35 Cal. (2d) 121, 19 U. S. Law Week 3074, 216 P. (2d) 825, 92 ACA 224, 206 P. (2d) 952	6, 7, 8
Yick Wo v. *Hopkins*, 118 U. S. 356, 30 L. Ed. 20	10

Statutes Cited

Civil Code of California, Sec. 48a (added by Stats. 1931, p. 2034; Am. Stats. 1945, ch. 1489, paragraph 5	2, 6, 9

	Page
Constitution of California, Article I, Sec. 1	4, 9
Article I, Sec. 9	4, 9
Article VI, Sec. 2	9
Constitution of the United States, 14th Amendment	
Constitution of the United States, 14th Amendment,	2, 5, 7, 8, 9
United States Code, Title 8, Section 42	10
Title 28, Sections 2101 and 2104	1

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JURISDICTIONAL STATEMENT

Pursuant to Rule 12, Rules of the Supreme Court of the United States, appellant sets forth his Jurisdictional Statement:

A

Jurisdiction is conferred by Title 28 U. S. Code, Sections 2101-2104.

The decision and judgment of the District Court of Appeal of the State of California, Second Appellate District, Division Three, was entered March 5, 1952 (the opinion of said District Court was filed January 4, 1952, and the order of the Supreme Court of the State of California denying a hearing was filed March 3, 1952). The petition for the

allowance of an appeal was filed within the 90 days provided by 28 U. S. C. 2101 (c).

B

Statutes Involved

Fourteenth Amendment to the Constitution of the United States:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Section 48a of the Civil Code of the State of California

1. In any action for damages for the publication of a libel in a newspaper, or of a slander by radio broadcast, plaintiff shall recover no more than special damages unless a correction be demanded and be not published or broadcast, as hereinafter provided. Plaintiff shall serve upon the publisher, at the place of publication or broadcaster at the place of broadcast, a written notice specifying the statements claimed to be libelous and demanding that the same be corrected. Said notice and demand must be served within 20 days after knowledge of the publication or broadcast of the statements claimed to be libelous.

2. If a correction be demanded within said period and be not published or broadcast in substantially as conspicuous a manner in said newspaper or on said broadcasting station as were the statements claimed to be libelous, in a regular issue thereof published or broadcast within three weeks after such service, plaintiff, if he pleads and proves such notice, demand and failure to correct, and if his cause of action be maintained, may

recover general, special and exemplary damages; provided that no exemplary damages may be recovered unless the plaintiff shall prove that defendant made the publication or broadcast with actual malice and then only in the discretion of the court or jury, and actual malice shall not be inferred or presumed from the publication or broadcast.

3. A correction published or broadcast in substantially as conspicuous a manner in said newspaper or on said broadcasting station as the statements claimed in the complaint to be libelous, prior to receipt of a demand therefor, shall be of the same force and effect as though such correction had been published or broadcast within three weeks after a demand therefor.

4. As used herein, the terms "general damages," "special damages," "exemplary damages" and "actual malice," are defined as follows:

(a) "General damages" are damages for loss of reputation, shame, mortification and hurt feelings;

(b) "Special damages" are all damages which plaintiff alleges and proves that he has suffered in respect to his property, business, trade, profession or occupation, including such amounts of money as the plaintiff alleges and proves he had expended as a result of the alleged libel, and no other;

(c) "Exemplary damages" are damages which may in the discretion of the court or jury be recovered in addition to the general and special damages for the sake of example and by way of punishing a defendant who has made the publication or broadcast with actual malice;

(d) "Actual malice" is that state of mind arising from hatred or ill will toward the plaintiff; provided, however, that such a state of mind occasioned by a good faith belief on the part of the defendant in the truth of the libelous publication or broadcast at the time it is published or broadcast shall not constitute actual malice. (Added by Stats. 1931, p. 2034; Am. Stats. 1945, ch. 1489, paragraph 5.)

Preamble to the Constitution of the United States:

"We the People of the United States, in order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America."

Article I, Section I, of the Constitution of the State of California:

"Inalienable Rights

Section 1. All men are by nature free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty; acquiring, possessing, and protecting property; and pursuing and obtaining safety and happiness. (Constitution of 1849, Art. 1, Sec. 1.)"

Article 1, Section 9, of the Constitution of the State of California:

"Liberty of Speech and of the Press

Sec. 9. Every citizen may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press. In all criminal prosecutions for libels, the truth may be given in evidence to the jury; and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact. Indictments found, or information laid, for publications in newspapers shall be tried in the county where such newspapers have their publication office, or in the county where the party alleged to be libeled resided at the time of the alleged publication, unless the

place of trial shall be changed for good cause. (Constitution of 1849, Art. 1, Sec. 9, revised 1879.)"

Amendment Fourteen, Section 1, of the Constitution of our United States:

"Guarantee of Protection to all Citizens"

"Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the States wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

C

Summary Statement of the Facts

This case involves the question of whether one's reputation is a property right which is entitled to protection under the provisions of the Fourteenth Amendment to the Constitution of the United States; it also involves the question of whether a newspaper publisher can be granted privileges and protection from liability for a knowingly false and malicious libel as an exception to the general liability of persons who publish a libel in any other manner, and whether such provision offends the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States.

The only facts before the Court are as set out in the plaintiff's complaint. Plaintiff is engaged in the business of a public relations agent and his ability to secure employment is largely dependent upon his reputation. The defendant is a corporation which publishes a daily newspaper called the "Chronicle" in the City of San Francisco. This

paper on three occasions published an article in which this plaintiff was called a "loan shark". The designation was and is untrue and defendant knew it was false and defamatory; it was published with ill will and malice, with the intention, design and purpose to injure plaintiff's professional standing and reputation, to discredit and defame him and to bring him into public contempt and ridicule. Plaintiff asked for general and exemplary damages.

The defendant demurred to the complaint on the ground, among others, that the complaint did not show compliance with Section 48(a) of the Civil Code of California in that there was no allegation that plaintiff had demanded a retraction, and no allegation of special damages. At the hearing on the demurrer, counsel for plaintiff stated that plaintiff could not amend the complaint to show compliance with said section, but that he was relying on his contention that the section is unconstitutional. Thereupon the trial judge stated that the California Supreme Court had held the section valid and the demurrer was sustained without leave to amend. Thereafter, judgment was entered for the defendant. The order sustaining the demurrer and the judgment each specify the basis of the ruling to be plaintiff's failure to comply with Section 48(a).

Plaintiff took the position at all times that Section 48(a) of the Civil Code is violative of due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States.

Plaintiff appealed and again urged and relied upon the unconstitutionality of Section 48(a) and the Appellate Court affirmed the decision of the trial court, saying, "Irrespective of our view as to the constitutionality of Section 48(a), we are bound to follow the decision of the Supreme Court in *Werner* v. *Southern Cal. etc. Newspapers*, 35 Cal. 2d 121. In the *Werner* case it was held that Section 48(a) is not invalid under either the due process clause or the

equal protection clause of the Fourteenth Amendment to the Constitution of the United States."

Plaintiff and appellant then asked the Supreme Court of the State of California for a hearing and urged that Court to reconsider the determination reached in the *Werner* case. The majority of the Supreme Court denied a hearing, but Justice Schauer wrote a dissenting opinion, Justice Carter concurring, stating that he would grant a hearing and reconsider the question raised, and that, "The question was raised in *Werner* v. *Southern Calif. etc. Newspapers* (1950), 35 Cal. 2nd 121, but after an appeal to the United States Supreme Court was filed (19 U. S. Law Week 3074) and probable jurisdiction noted (19 U. S. Law Week, Nov. 14, 1950, Index P. 20) the cause was dismissed in the United States Supreme Court on motion of the plaintiff, presumptively for a consideration paid by the defendants."

The State of California, by its constitution and laws, gives every person the right to write and speak his mind freely, but makes him responsible for any abuse thereof. Section 48(a) creates an exception to that general rule as to anyone who commits a libel by publication in a newspaper, which is the most effective of all means of disseminating a libel. It is appellant's position that this is not a valid exception under the Fourteenth Amendment to the Constitution of the United States.

The California Legislature recognized that libel does cause injury for it made a provision requiring a retraction if it is demanded by the person libeled. Appellant contends that a retraction is not and cannot be an adequate and sufficient substitute or replacement for monetary damages. Furthermore, there is no justification for placing a burden on the injured person and making it his responsibility to demand a retraction. This procedure is contrary to the Fourteenth Amendment to the Constitution of the United States.

Appellant further contends that one's reputation is property, and that it has an actual and realistic value, monetary and otherwise, and that one is entitled to protection of such property under the Constitution of the United States. This being so, the State of California has no right to deprive appellant of his rights to secure compensation for injury to such property. Section 48(a) does that very thing and is therefore invalid and void under the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States.

The decision of the District Court of Appeal in this case, as pointed out above, is predicated on the decision of the State Supreme Court in the case of *Werner* v. *Southern Cal. etc. Newspapers,* 35 Cal. (2) 121; 216 P. (2) 825, and the opinion in that case is to be included in the record so as to show the actual holding by the California courts.

D

Importance of the Questions Involved

The modern newspaper is the most effective and far reaching medium for the publication of a libel that the world has ever known. Is a libeler using that medium to be treated differently than libelers using other methods of written expression? It one libeled in a newspaper to be deprived of any monetary redress? Is a knowingly false and malicious libel to be privileged merely because it is published in a newspaper? Each of the foregoing questions is of paramount importance to every person, and to every newspaper, in the United States. The ultimate answers are to be found only in the Federal Constitution. The present case presents the issue directly, and it is important that this Court give the answers.

The District Court of Appeal of the State of California,

Second Appellate District, Division Two, in the *Werner* case, prior to the hearing in the State Supreme Court, held said section 48(a) to be unconstitutional (92 ACA 224; 206 P. 2 952). Justices Schauer and Carter have dissented each time that the question has been before the State Supreme Court, as they did in the petition for hearing in the present case. It thus appears there is a strong feeling among the judiciary of the State of California that the section is unconstitutional. Since the question is a federal one, it should be finally determine by the Supreme Court of the United States.

E

Statutes & Cases Believed to Sustain Jurisdiction

Section 48(a) of the Civil Code of California, as amended by Stats. 1945, ch. 1489, P. 2762;

Article I, Section 1, of the Constitution of the State of California;

Article I, Section 9, of the Constitution of the State of California;

Fourteenth Amendment to the Constitution of the United States;

Preamble to the Constitution of the United States;

Article VI, Section 2 of the Constitution of the United States, as follows:

> "*Supreme Law of the Land*
>
> 2. This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the Judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding."

Title 8, U. S. C. A., Section 42, as follows:

"Section 42. Property rights of citizens.

All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property."

* * * * * * *

Cases to Sustain Jurisdiction

Oyama v. *California,* 332 U. S. 633, 92 L. Ed. 249;

Takahashi v. *Fish & Game Commissioner,* 334 U. S. 410, 92 L. Ed. 1478;

Sipuel v. *Board of Regents of the University of Oklahoma,* 332 U. S. 631, 92 L. Ed. 247;

Missouri ex rel. Gaines v. *Canada,* 305 U. S. 337, 83 L. Ed. 208;

Toomer v. *Witsell,* 334 U. S. 385, 92 L. Ed. 1460, 1475, Headnote 17;

Yick Wo v. *Hopkins,* 118 U. S. 356, 30 L. Ed. 220;

Truax v. *Corrigan,* 257 U. S. 312, 66 L. Ed. 254;

Truax v. *Raich,* 239 U. S. 33, 60 L. Ed. 131;

Buchanan v. *Warley,* 245 U. S. 60, 62 L. Ed. 149;

Stromberg v. *California,* 283 U. S. 359, 75 L. Ed. 1117;

United States v. *C. I. I.,* 92 L. Ed. 1315;

Hebert v. *Louisiana,* 272 U. S. 312, 71 L. Ed. 270.

Respectfully submitted,

CLYDE THOMAS,
JAMES G. BUTLER,
WELBURN MAYOCK,
Attorneys for Plaintiff and Appellant.

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CHARLES ELMORE CROPLEY
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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 96

JAMES MONROE JEFFERSON,
Appellant,

vs.

CHRONICLE PUBLISHING COMPANY, A CALIFORNIA CORPORATION

STATEMENT IN OPPOSITION TO APPELLANT'S STATEMENT OF JURISDICTION AND MOTION TO DISMISS OR AFFIRM

COOPER, WHITE & COOPER,
SHELDON G. COOPER,
GEORGE A. HELMER,
ROBERT M. RAYMER,
701 Crocker Building,
San Francisco 4, California,
Attorneys for Appellee.

INDEX

Page

Subject Index

Statement opposing jurisdiction and motion to dismiss or affirm 1
Facts and proceedings below 1
Statute involved 2
Grounds for denying jurisdiction 3
The objective of the legislature is proper .. 5
The classification is reasonable 6
Summary 7

Table of Cases Cited

Allen v. *Pioneer Press*, 40 Minn. 117, 41 N. W. 936 ... 6
Bordens Farm Products Co. v. *Baldwin*, 293 U. S. 194 7
Clark v. *Paul Gray, Inc.*, 306 U. S. 583 7
Fearon v. *Treanor*, 301 U. S. 667 4
Hanfgarn v. *Mark*, 302 U. S. 641 4
Jefferson v. *Chronicle Publishing Co.*, 108 Advance Cal. Appellate Reports 634, 238 Pac. (2d) 1018, 38 Advance California Reports No. 18, page 1 1
Northern Pacific Ry. Co. v. *Meese*, 239 U. S. 614 4
Railway Express Agency v. *New York*, 336 U. S. 106 7
Ross v. *Gore*, — Fla. —, 48 Sou. (2d) 412 6
Silver v. *Silver*, 280 U. S. 117 4
Werner v. *Southern California Associated Newspapers*, 35 Cal. (2d) 12, 216 Pac. (2d) 825 5

Statutes Cited

Angoff "Handbook of Libel" 6
Arthur & Crossman "The Law of Newspapers" pp. 500-570 6
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Florida Statutes Annotated, Section 770.02 6
Minnesota Statutes Annotated, Section 548.06 6
Prosser on Torts, p. 778 5
United States Code, Title 28, Section 1257 2

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 96

JAMES MONROE JEFFERSON,

Appellant,

vs.

CHRONICLE PUBLISHING COMPANY, A CALIFORNIA CORPORATION

STATEMENT IN OPPOSITION TO APPELLANT'S STATEMENT OF JURISDICTION AND MOTION TO DISMISS OR AFFIRM

In opposition to appellant's statement as to jurisdiction herein and in support of motion to dismiss or affirm, appellee respectfully shows:

I. Facts and Proceedings Below

Governor Earl Warren of California, at a general press conference on legislative matters, characterized appellant as a "loan shark". Appellee reported this in its daily newspaper published in San Francisco. Thereafter appellant initiated action for libel in the Superior Court of Los Angeles County, the place of his residence. The complaint seeks damages in the amount of $600,000.00. No allegation

of injury to appellant in his business and profession (that of public relations agent) is made; the prayer is limited to general and exemplary damages as such elements of damage are defined in § 48a of the Civil Code of the State of California.

Appellee's demurrer to the complaint set forth two principal objections: (1) that the publications were absolutely privileged under California law; and (2) that by failing to allege demand for retraction of the purported libel or to describe damage to appellant's business or profession, the complaint failed to comply with § 48a Civil Code, the California retraction statute.

After hearing the trial court entered its judgment sustaining the demurrer "on the ground that the complaint does not allege special damages or demand for retraction pursuant to Sec. 48a of the Civil Code and the Plaintiff having stated that he could not amend to meet that objection, leave to amend was denied and all other grounds of demurrer were ordered off calendar".[1]

Judgment was affirmed in the California District Court of Appeal at 108 Advance California Appellate Reports 634, 238 Pac. (2d) 1018. Petition for Hearing in the Supreme Court of California was denied at 38 Advance California Reports No. 18, at page 1 of Minutes. Appellant now attempts this appeal from the judgment of the District Court of Appeal under 28 U. S. C. A., 1257, subdivision 2.

II. Statute Involved

Appellant contends in his Jurisdictional Statement that § 48a Civil Code of the State of California is invalid. That Act has been set forth at length in appellant's Statement and therefore will not be repeated here.

---

[1] It is appellee's position that even were appellant's objections to Civil Code 48a valid his complaint is fatally defective under other provisions of California law.

III. Grounds for Denying Jurisdiction

In urging jurisdiction upon this Court the appellant states that Civil Code Section 48a is unconstitutional because it deprives him of property without due process. There is no legal foundation supporting this position.

A brief analysis of that statute demonstrates that its provisions are not as startling as represented in the argument supporting jurisdiction. The law has a two-fold effect. One is the creation of a remedy for the benefit of the person defamed which did not exist at common law, namely, the right to demand a retraction. This demand is also a condition precedent to maintaining an action for general damages. If the request for retraction is ignored the person claiming injury may then seek general damages. In the event that a retraction is published he is entitled to recover (assuming a libel has occurred) such damages as may have been "suffered in respect to his property, business, trade, profession or occupation . . ." (Civil Code § 48a 4(b)).

Appellant asserts that the statute assailed permits the taking of his reputation, which is claimed to be a species of property.

It is unnecessary to point out to this Court that appellant's own labelling of the issue does not determine the existence of a Feedral question. The enactment attacked was law long before the statement complained of was published. Stripped of irrelevant legal verbiage, it is evident that this appeal is based upon the premise that Civil Code § 48a is invalid because it modifies the common-law remedy for injury to reputation. Simply put appellant urges that he has an indestructible property right to claim all damages known to common law for redress of libel. It will be demonstrated that this is a fallacy.

If this constitutional issue had never been before the court, a review of appellant's contention might be justifiable.

The fact is that on a number of occasions the court has rejected the same erroneous conception as advanced in this case. In *Silver* v. *Silver*, 280 U. S. 117, the appellant there asserted that the so-called guest statute of Connecticut was unconstitutional because it destroyed her common-law right as a passenger in a motor vehicle to recover damages for injuries resulting from its negligent operation. In delivering the opinion of the majority affirming the constitutionalty of the act, Mr. Justice Stone stated (p. 122):

> "We need not, therefore, elaborate the rule that the Constitution does not forbid the creation of new rights, or the abolition of old ones recognized by the common law, to obtain a permissible legislative object (citing cases)."

Objections the same in principle have been advanced to the constitutionality of various Workmen's Compensation laws and statutes destroying right of action for criminal conversation, alienation of affections and breach of promise. See:

Northern Pacific Ry. Co. v. *Meese*, 239 U. S. 614;
Fearon v. *Treanor*, 301 U. S. 667;
Hanfgarn v. *Mark*, 302 U. S. 641.

Reason as well as authority dictates that the principles of legal redress must be subject to modification. If the Constitution proscribes the action taken by the legislature of California in altering the remedy existing at common law, then it inevitably follows that there can be no innovation to meet the demand of changed circumstance. Such a construction would transform our legal rules into an ossified set of immutable principles—jural rights and remedies would be forever circumscribed and limited by the composite dead hand of the creators of the Anglo-Saxon legal system.

1. *The Objective of the Legislature Is Proper*

The legislature of the State of California sought a permissible and proper legal objective in enacting Civil Code § 48a. As pointed out by Dean Prosser (*Prosser on Torts*, p. 778) the action for defamation developed without any particular aim or plan. The perplexing confusion resulting has long been the subject of profound criticism by distinguished commentators. The principles defining the wrong and its remedies resulted from trial and error experiment of the miscellaneous courts of England having jurisdiction from time to time over the subject matter of libel and slander. The precedent so created is entitled to respect —but no veil of sanctity forbids scrutiny of the premise upon which those rules are based. The legislature of California has examined the legal structure and found it wanting. Thus Civil Code § 48a was enacted to effect an important concept of local policy.

Many reasons justifying the promulgation of this statute are evident. The Supreme Court of the State of California in *Werner* v. *Southern California Associated Newspapers*, 35 Cal. (2d) 121, 216 Pac. (2d) 825, well states two of them (35 Cal. (2d) 128):

> "In view of the conflicting rules of liability presented by the law of defamation itself and the recognition in other situations that the Legislature may abolish causes of action to prevent unfounded litigation, we cannot say that the Legislature could not reasonably conclude that the danger of excessive recoveries of general damages in libel actions justified limitation of recovery to special damages when a retraction has not been demanded and refused.
>
> Nor can we take exception to the second basis upon which the Legislature could justify its limitation of

recovery to special damages, namely, the public interest in the free dissemination of news. In view of the complex and far-flung activities of news services upon which newspapers and radio stations must largely rely and the necessity of publishing news while it is new, newspapers and radio stations may in good faith publicize items that are untrue but whose falsity they have neither the time nor the opportunity to ascertain. The Legislature may reasonably conclude that the public interest in the dissemination of news outweighs the possible injury to a plaintiff from the publication of a libel, and may properly encourage and protect news dissemination by relieving newspapers and radio stations from all but special damages resulting from defamation, upon the publication of a retraction."

California is not alone in restricting damages for defamation when retraction is provided for. *Minnesota Statutes Annotated*, § 548.06 and *Florida Statutes Annotated*, § 770.02, are similar in objective to § 48a. Both laws limit damages where a retraction is printed and further make a distinction between publication of libel by a newspaper and libel published by other means. When these two statutes were attacked on grounds similar to those advanced by the appellant here the highest courts of both states held that it was for the legislature to choose between the conflicting policies advanced in favor of and against the enactments.

See:

Allen v. *Pioneer Press*, 40 Minn. 117, 41 N. W. 936;
Ross v. *Gore*, — Fla. —, 48 Sou. (2d) 412.[2]

2. *The Classification Is Reasonable*

Because of the peculiar nature of the newspaper business and the practical necessities placed upon it by demand of

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[2] See also: Arthur & Crossman "The Law of Newspapers" (p. 500-570) and Angoff "Handbook of Libel" for reference to various retraction statutes of 20 states.

the public, the legislature of California was fully justified and reasonable in making the classification created by Civil Code § 48a. The comments of the Supreme Court of that State in *Werner* v. *Southern California Associated Newspapers*, quoted *supra*, indicate clearly the propriety of such action. This Court has often stated that a classification will be sustained as valid unless totally lacking in any reasonable basis. Such is not the case here.

Bordens Farm Products Co. v. *Baldwin*, 293 U. S. 194;
Clark v. *Paul Gray, Inc.*, 306 U. S. 583;
Railway Express Agency v. *New York*, 336 U. S. 106.

Summary

An objective appraisal of appellant's position makes it clear that he complains of the *wisdom* of the statute attacked. It is neither justified nor proper to ask this Court to substitute its judgment for that of the legislature of California.

It is respectfully submitted that the judgment below should be summarily affirmed or the appeal dismissed.

Respectfully submitted,

COOPER, WHITE & COOPER,
SHELDON G. COOPER,
GEORGE A. HELMER,
ROBERT M. RAYMER,
Attorneys for Defendant and Respondent.